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IN THE

Supreme Court of the United States

October Term, 1958.

No. 214.

GEORGE MASTROS,
Petitioner,

v.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Petitioner's Reply Memorandum.

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PETITIONER'S REPLY MEMORANDUM

The Government's Brief in Opposition calls for a few words in reply. It states (Br. Op. 10-11), (footnote omitted):

> "Petitioner also argues that the evidence was insufficient to establish a false claim because there was evidence that the ultimate proposal, filed after that here involved, was for a higher total amount, even though the claim as to the engineering labor costs was reduced by approximately $77,000. The fact remains, however, that the claim presented did not contain a claim for reimbursement of an excessive amount for labor costs. As of the date it was presented, for what it purported to cover,

the claim was false. The fact that a subsequent proposal may have been higher because of the legitimate increase in other items does not affect the falsity of the claim that was presented at the time it was presented."

Inasmuch as GX9, the fourth settlement proposal —the original of which has been filed with the Clerk of this Court—shows that Espey had asked some $200,000 more from the Government, *after the engineering costs were eliminated*, than the amount in the settlement proposals (GX6, GX7, and GX8) prepared by petitioner and in respect of which he was convicted, it is plain that petitioner was not a party to any document that laid claim to a sum greater than that to which Espey was entitled. To the contrary, petitioner signed documents that sought *less* than the total amount of money "due and owing" and paid to that company by the United States. Consequently, it is plain that, having regard to the allegation of the indictment (2a) that petitioner had prepared a settlement proposal which "was false since said defendant knew well that the total amount due and owing to the Espey Manufacturing Company, Inc., on said settlement claim was substantially less than the amount claimed," the Government *now* necessarily concedes that he did not make a false claim *as charged*. All that the Government now asserts is that he made a false statement in violation of 18 U. S. C. § 1001 (Pet. 3). Yet the count laid under that section, which denounces the making of false statements was dismissed (1a, 312a, 313a).

Thus the record plainly establishes petitioner's innocence under the count on which he was convicted, laid under 18 U. S. C. § 287 (Pet. 2), and on which alone the sentence rests. There is accordingly no need at this juncture for petitioner to reargue his contentions (Pet. 17-20) that the Government has utterly failed to

establish any falsity in fact in the statements themselves.

Accordingly it is respectfully submitted that the present petition for certiorari should be granted.

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Counsel for the Petitioner.

September 1958.